U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31261130

Date: MAY 29, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

[1] *See also Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to his proposed endeavor, the Petitioner indicated that he plans to work in "the industrial machinery maintenance sector with his startup, [redacted] He asserts that his company "will concentrate on delivering high-quality, innovative, and cutting-edge maintenance services. These services would encompass a broad spectrum of maintenance needs, from routine inspections and adjustments to advanced diagnostics and repair, utilizing the latest technologies and methodologies."

In addition, the Petitioner submitted the business plan for his company. This business plan includes industry and market analyses, information about the company and its services, financial forecasts and projections, marketing strategies, a discussion of the Petitioner's education and work experience, and a description of company personnel. Regarding future staffing, the Petitioner's business plan anticipates that his company will "create twelve full-time equivalent jobs in addition to the management team within the first three years of operations," but he did not elaborate on these projections or provide evidence supporting the need for these additional employees. Furthermore, while his plan offers revenue projections of $1,140,000 in year one, $1,640,000 in year two, $2,200,000 in year three, $2,820,000 in year four, and $3,500,000 in year five, these projections are not supported by details showing their basis or an explanation of how they will be achieved.

The record includes information about the job outlook for industrial machinery mechanics, machinery maintenance workers, and millwrights. In addition, the Petitioner provided articles discussing the U.S. national strategy for advanced manufacturing, the U.S. manufacturing ecosystem, the effect of a skilled labor shortage and changing maintenance strategies on the maintenance function, ways to address the skilled labor shortage in industrial maintenance, talent shortages in the maintenance industry, immigrant pathways for STEM employment in the United States, and the construction equipment maintenance and repair market. He also submitted information about the global forecast for construction equipment markets, the high demand for new and used construction equipment, economic effects from foreign STEM talent in the United States, the talent shortage in industrial maintenance, and the skilled factory worker shortage in our country.[2]

[2] We are not persuaded by the argument that the Petitioner's proposed endeavor has national importance due to the shortage of workers in his field. Here, the Petitioner has not established that his proposed endeavor stands to impact or significantly reduce the claimed national shortage. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

We agree with the Petitioner that the submitted documentation establishes his endeavor has substantial merit. In determining national importance, however, the relevant question is not the overall importance of the industry in which the individual will work or whether that industry is facing labor shortages; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner must still demonstrate the potential prospective impact of his specific proposed endeavor.

The Petitioner offered letters of support from A-V-A-, M-I-S-, Z-D-S-, and K-A-R- discussing his industrial engineering capabilities and machinery maintenance experience. With the appeal, the Petitioner presents letters from D-K-, O-L-, R-M-, and S-K- reflecting interest in collaborating with the Petitioner or utilizing his company's maintenance, design, and development services. The Petitioner's skills, knowledge, and prior work in his field, as well as interest from potential customers or business partners, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar's* first prong. The letters from Petitioner's colleagues and prospective clients do not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that his specific proposed work offers broader implications in his field or substantial positive economic effects for our nation that rise to the level of national importance.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of his proposed endeavor. The Director stated that the Petitioner had not demonstrated his undertaking "stands to sufficiently extend beyond [his] organization and its clients, or the individuals [he] would serve to impact the industry or field more broadly." The Director also concluded the Petitioner had not shown that his proposed endeavor "has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation."

On appeal, the Petitioner provides a "Business Plan Supplement" which asserts his proposed endeavor offers a "national level impact." This supplement contends that his undertaking supports "growth of the U.S. gross domestic project through industrial machinery maintenance," enhancement of "U.S. business competitiveness through advanced machinery maintenance," "environmental sustainability in industrial machinery maintenance," "the development of economically distressed areas in [redacted] Upstate New York," "knowledge transfer," and "fulfilling the job market gap." The Petitioner, however, has not provided evidence demonstrating that his proposed business activities would operate on such a scale as to rise to a level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Furthermore, while any basic economic activity has the potential to positively affect the economy to some degree, the Petitioner has not demonstrated how the potential prospective impact of his proposed endeavor stands to offer broader implications in his industry or to generate substantial positive economic effects in the region where his company will operate or in other parts of the United States.

The Petitioner argues in the appeal brief that the services offered by his company "align with the industry's evolving needs, incorporating advanced technologies to streamline processes, reduce costs, and enhance overall efficiency." He states that "[t]he industrial engineering industry plays a vital role in boosting the nation's economy by optimizing processes, systems, and organizations." The Petitioner further contends that "[t]the global construction equipment maintenance and repair market

is projected to grow significantly, contributing to the overall expansion of the maintenance and repair industry." In addition, he asserts that "[t]he U.S. construction market is expected to grow, driven by increased construction activities for infrastructural development."

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. While the Petitioner's statements reflect his intention to provide machinery maintenance services to his company's future clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact his industry, the industrial engineering field, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not shown that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not demonstrated that his company's future staffing levels and business activity stand to provide substantial economic benefits in New York or the United States. While the Petitioner claims that his company has growth potential, he has not presented evidence indicating that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that his endeavor stands to generate jobs for U.S. workers, he has not offered sufficient evidence that his endeavor offers New York or the United States a substantial economic benefit through employment levels or business activity.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.